

AUG 06 2010

PTO/SB/85 (03-09)

Approved for use through 03/31/2012. OMB 0851-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)
A85-057Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

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OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,835,680Application Number: 08/726,636Issue Date: November 10, 1998Filing Date: October 7, 1996

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

August 6, 2010

Date


Signature

George A. Herbster

Typed or printed name of person signing Certificate

{Page 1 of 4}

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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1. SMALL ENTITY☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27**2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS**☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)**3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))**

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input checked="" type="checkbox"/> \$ 2,480.00	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 2,480.00**4. SURCHARGE**The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00**5. MANNER OF PAYMENT**

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

AUG 06 2010

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7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check

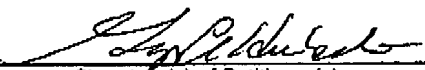
WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

August 6, 2010

Date

George A. Herbster

24,002

Typed or printed name(s)_____
Registration Number, if applicable

100 Cummings Center, Suite 213C

(978) 526-8111

Address_____
Telephone Number

Beverly, MA 01915

Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(l)(1) (fee for filing the maintenance fee petition)
☒ Other: Declaration of Dov Glucksman

Aug. 6. 2010 12:12PM

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No. 4680 P. 6/18

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

August 6, 2010

Date

George A. Herbst

Type or printed name

24,002

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached Statement of Why Maintenance Fee Was Not Paid Timely and Declaration of Dov Glucksman.

(Please attach additional sheets if additional space is needed)

[Page 4 of 4]

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AUG 06 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Dov Glucksman et al.
Patent No. : 5,835,680
Granted : November 10, 1998
FOR : Immersion Heater and Support Structure

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OFFICE OF PETITIONS

Statement of Why Maintenance Fee Was Not Paid Timely

Appliance Development Corporation (Petitioner) hereby petitions for reinstatement of the above-identified United States Letters Patent No. 5,835,680 because the maintenance fee payment due prior to November 11, 2006 was not paid. Petitioner submits that the delay in payment of this maintenance fee was unavoidable.

The required maintenance fee of \$2,480.00 set forth in 37 CFR 1.20(f), the surcharge of \$700.00 set forth in 37 CFR 1.20(i)(1) and the fee of \$540.00 set forth in 37 CFR 1.17(l) for the Petition to Revive Unavoidably Abandoned Application are submitted herewith. As described in detail below and supported by a Declaration of Dov Glucksman (Exhibit I), Petitioner has (1) exercised reasonable care to ensure that the maintenance fee was paid timely and (2) filed this Petition promptly after Petitioner became aware of the expiration of the above-identified patent.

Background

As a principal and President of Petitioner, Dov Glucksman is the person who has the most knowledge of the facts and circumstances which led to the expiration of United States Letters Patent No. 5,835,580 (hereinafter the "'680 Patent'"). In addition Dov Glucksman is a co-inventor with Karl. H. Weidemann. The '680 Patent is assigned to Petitioner. (D.G. 2-4)¹ Petitioner has, since prior to the filing of '680 Patent to date, operated at the same business location at 130 Center Street, Danvers, MA 01923 (D.G. 5).

¹ In this Petition, "D.G." refers to the Declaration of Dov Glucksman, Exhibit I hereto, and any following number refers to the corresponding paragraph in that Declaration.

Reasonable Care

Petitioner has exercised reasonable care to ensure that the maintenance fee would be paid timely. Petitioner retained the services of Sofer & Haroun, L.L.P. of New York City (hereinafter the "Sofer Firm"). (D.G. 7). The Sofer Firm represented Petitioner in a number of matters related to the filing and prosecution of patent applications. (D.G. 7) Specifically the Sofer Firm prepared and filed the application (the "'680 Application") and prosecuted that application to issue. (D.G.8 - 10).

After grant, the Sofer Firm continued to represent Petitioner with respect to the '680 Patent as evidenced by its submission of the first maintenance fee on August 7, 2002 and paid maintenance fees for other of Petitioner's patents in 2000. Petitioner has not found any correspondence relating to the need to make any such maintenance fee payments.²

The Sofer Firm continued to represent Petitioner until July 12, 2010. Petitioner has found no evidence that the Sofer Firm had withdrawn from its representation of Petitioner or had refused to undertake any responsibilities in connection with the matters under its care. Particularly there is no record that the Sofer firm had ceased to represent Petitioner in connection with maintaining records of due dates for U.S. Patent 5,835,680. Although no supporting documents were found, it is clear that the Sofer firm had some communication with respect to a maintenance fee for another of Petitioner's patents as late as 2007. There is no other evidence that the Sofer Firm had withdrawn from its responsibilities in connection with any pending matter, including its responsibility for docketing the due dates for maintenance fees for the '680 patent. (D.G. 11-16).

Petitioner also finds no record that it ever received the original '680 Patent. (D.G. 17)

It is submitted that Petitioner, through the facts set forth in Dov Glucksman's Declaration demonstrate that Petitioner exercised reasonable care in its understanding that the Sofer Firm was responsible for assuring that Petitioner was aware of all maintenance fees that would come due. The Sofer Firm did not perform its expected duties in this matter. Therefore, "reasonable care was taken to ensure that the maintenance fee would be paid timely." 37 CFR 1.378(b)(3).

² Many of the Petitioner's records were destroyed as a result of a fire on July 4, 2006, (D.G. 6)

Prompt Filing

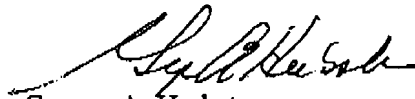
The '680 Patent is the subject of a royalty-bearing license agreement under which Petitioner has been receiving royalties since before the '680 Patent expired. Petitioner has no record or recollection of any correspondence from the Sofer Firm or the United States Patent and Trademark Office that would have alerted Petitioner to the expiration of the '680 Patent. On June 8, 2010 the licensee of that patent informed Petitioner that the patent had expired. This was the first inkling to Petitioner that the '680 Patent had expired. (D.G. 18-21).

Petitioner had no intent to abandon the application and would have taken earlier action to pay the maintenance fee or to seek reinstatement as an unintentionally delayed payment had Petitioner had notice. Petitioner had no such notice prior June 8, 2010. (D.G. 21-24) Thus, this Petition is being filed promptly after the June 8, 2010 consistent with the exercise of due diligence in obtaining the facts surrounding the failure to make a timely maintenance fee payment. Therefore, it is submitted that Petitioner, having first heard of this matter on June 8, 2010, is filing the petition promptly pursuant to 37 CFR 1.378(b)(3).

Summary

Petitioner has submitted herewith the required maintenance fee, surcharge and petition fee. The facts in this case demonstrate that the failure of the Sofer Firm to make Petitioner aware of its obligation to make a maintenance fee payment or even to notify Petitioner that the patent had expired led to the situation requiring this Petition. The abandonment of the '608 Patent was unavoidable. Therefore, Petitioner respectfully submits that this Petition should be granted and that the '068 Patent should be reinstated.

Respectfully Submitted,



George A. Herbster
Reg. No. 24,002
100 Cummings Center
Suite 213C
Beverly, MA 01915
978-526-8111

ATTACHMENT I

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AUG 06 2010

"Docket No"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Dov Glucksman et al.
Patent No. : 5,835,680
Granted : November 10, 1998
FOR : Immersion Heater and Support Structure

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AUG 11 2010

OFFICE OF PETITIONS

Declaration of Dov Glucksman

Dov Glucksman, declares that:

1. All statements made by me in this Declaration of my own knowledge are true and all statements made on information and belief are believed to be true; and these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and such will false statements may jeopardize the validity of the above-identified patent.
2. I am making this Declaration in support of a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) seeking reinstatement of the above-identified U.S. Patent No. 5,835,680 (hereinafter the '680 Patent) and in my roles as President of Appliance Development Corporation, the assignee of the '680 Patent, and as a co-inventor of the '680 Patent
3. The '680 Patent was granted on November 10, 1998 based upon United States Patent Application Serial No. 08/726,636 filed October 7, 1996 (hereinafter the '680 Application) filed by Karl H. Weidemann (deceased) and me as joint inventors for an Immersion Heater and Support Structure.
4. Mr. Weidemann and I assigned our rights in this invention to Appliance Development Corporation by an assignment which, on information and belief, was recorded in the United States Patent and Trademark Office on October 7, 1996 beginning at Reel/Frame 008263/0155.
5. Appliance Development Corporation has had a regular place of business in Massachusetts at 130 Centre Street, Danvers, MA 01923 since 1994 and I have been President of Appliance Development Corporation since its registration in the State of

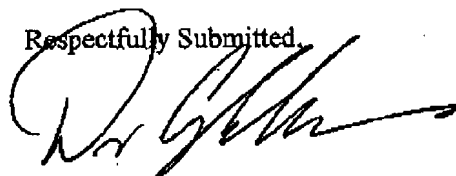
Delaware in 1992. One of my responsibilities is to act as liaison with intellectual property counsel in connection with patent matters.

6. In preparation of this Declaration, I consulted those business records that remain available to me. Appliance Development Corporation occupies the basement and first floor of the above-identified facilities in Danvers, Massachusetts. On or about July 4, 2006 there was a fire on the second floor of those facilities. Water used to extinguish the fire reached the first floor of the building and damaged or destroyed many of our files including files that may have contained information that would corroborate my statements in this Declaration.
7. Prior to the filing of the '680 Application I retained the firm of Sofer & Haroun, L.L.P. of New York, New York (hereinafter the "Sofer Firm") to represent Appliance Development Corporation and to file a number of other patent applications on behalf of Appliance Development Corporation.
8. Prior to July 12, 1996 I sent a disclosure to the Sofer Firm with a request to prepare and file the '680 Application in the United States Patent and Trademark Office. Exhibit A is a copy of a cover letter to me from Robert M Haroun of the Sofer Firm dated July 12, 1996 that accompanied a draft of the '680 Application.
9. The Sofer Firm thereafter prosecuted the application and succeeded in obtaining the above-identified patent. Exhibit B is a copy of a letter from Robert M. Haroun dated June 14, 1998 that informs me about a Notice of Allowance.
10. Exhibit B is the last correspondence in my file concerning the '680 Application.
11. On information and belief, the Sofer Firm submitted a maintenance fee for the '680 Patent on or about August 7, 2002 and submitted maintenance fees for three other patents assigned to Appliance Development Corporation were paid in 2000. I find no written correspondence or emails with the Sofer Firm regarding any of these payments. After a thorough search of the files remaining after the fire, I did not find any records that would specify the process by which the Sofer Firm and I determined whether to file a maintenance fee. Moreover, I cannot recall any facts surrounding the instructions provided with respect to any of these maintenance fees.
12. I have found no correspondence requesting instructions on paying the second maintenance fee for the '680 Patent.

13. On information and belief, Appliance Development Corporation has had no outstanding balance owed to the Sofer Firm since January 1, 2002.
14. At all times I relied upon the Sofer Firm to maintain all necessary records with respect to all of Appliance Development Corporation's applications and patents and to inform me of any actions that were required as they came due.
15. I find no correspondence from the Sofer Firm informing me that it was withdrawing from its representation of Appliance Development Corporation in any matter and, on information and belief the Sofer Firm remained of record as our attorneys in the United States Patent and Trademark Office until July 20, 2010 when Appliance Development Corporation revoked the Power of Attorney to the Sofer Firm and appointed new counsel to represent Appliance Development Corporation.
16. Appliance Development Corporation has understood that its patent counsel would maintain records to assure timely responses to including the timely payment of maintenance fees. Appliance Development Corporation has relied upon that understanding that it was the duty of the Sofer Firm to maintain records to assure all appropriate actions were brought to its attention. At no time did the Sofer Firm withdraw from that duty. Therefore, I believed that the responsibility for assuring that the maintenance fees were being paid remained with the Sofer Firm, especially because they had paid the first maintenance fee for the '680 Patent and because they had obviously billed me for filing a maintenance fee for some patent in 2007. I find no records that the Sofer Firm informed me that the second maintenance fee was due for the '680 Patent.
17. While I found original versions of other United States patents in our files, I did not find the issued '680 Patent in original form. I find no additional correspondence from the Sofer Firm regarding the '680 Patent.
18. Prior to the payment of the first maintenance fee, Appliance Development Corporation entered into a royalty-bearing license for the '680 Patent with a third party represented to me to be a small entity. In 2007 another company ("Current Licensee" and a large entity) acquired that royalty-bearing license.
19. Appliance Development Corporation has received regular report and payments under that license agreement for the '680 Patent.

20. On or about June 8, 2010 the Current Licensee informed Appliance Development Corporation that the '680 Patent had expired. I then requested current counsel to investigate the matter and learned that the '680 Patent had indeed expired because the second maintenance fee had not been paid.
21. On information and belief, I had never received any correspondence from the United States Patent and Trademark Office or the Sofer Firm concerning the expiration of the '680 Patent.
22. Had the Sofer Firm notified Appliance Development Corporation of the requirement to file the second maintenance fee in a timely manner, Appliance Development Corporation would have authorized that payment.
23. Had Appliance Development Corporation received any notification of the expiration of the '680 Patent from the United States Patent and Trademark, directly or indirectly through the Sofer Firm, Appliance Development Corporation would have authorized immediate action to file a Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent.
24. At all times, particularly since the signing of the license agreement, Appliance Development Corporation has intended to maintain the '680 Patent.

Respectfully Submitted,



Dov Glucksman

EXHIBIT A

Aug. 6. 2010 12:14PM

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No. 4680 P. 16/18

SOFER & HAROUN, LLP
ATTORNEYS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
342 MADISON AVENUE
SUITE 1921
NEW YORK, N.Y. 10173

RECEIVED JUL 15 1996

ROBERT M. HAROUN
JOSEPH SOFER

BARRY J. MARENBERG

JOHN P. BLASCO
FRIEDRICH KUPFFNER
OF COUNSEL

July 12, 1996

TELEPHONE
(212) 697-2800
FACSIMILE
(212) 697-3004

Dov Glucksman
President
Appliance Development Corporation
130 Centre Street
Danvers, Massachusetts 01923.

RECEIVED
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OFFICE OF PETITIONS

Re: U.S. Patent Application For: *open*
IMMERSION HEATER AND SUPPORT STRUCTURE
Patent
Our File: 505-029

Dear Dov:

Enclosed for Karl's and your review is a draft of the above identified application. The figures provided are informal drawings, formal drawing will be prepared in due course.

Please review the application for accuracy and completeness and then give me a call with your comments, following which we shall make any necessary revisions and then send you the final documents for pre-filing execution.

We look forward from hearing from you.

Very truly yours,

[Signature]
Robert M. Haroun

RMH/st
Enc.

Aug. 6. 2010 12:14PM

No. 4680 P. 17/18

SOFER & HAROUN, LLP
ATTORNEYS AT LAW
PATENTS, TRADEMARKS & COPYRIGHTS
342 MADISON AVENUE
SUITE 1921
NEW YORK, N.Y. 10173

ROBERT M. HAROUN
JOSEPH SOFER
STANLEY D. FERENCZ III

THOMAS C. HUGHES

JOHN P. BLASKO
FREDRICK KUEFFNER
ALAN ROBERTS
OF COUNSEL

June 14, 1998

Mr. Dov Glucksman
Appliance Development Corp.
130 Centre Street
Danvers, MA 01923

Re: U.S. Patent Application
For: IMMERSION HEATER AND SUPPORT STRUCTURE
Our File No. 505-029

Dear Dov:

We are pleased to inform you that we have now received a Notice of Allowance in connection with the above-identified application, a copy of which is enclosed. You will note from the enclosed copy that the Government Issue Fee for this case is \$660.00 and that the fee must be paid by August 16, 1998. Accordingly, we would appreciate it if you would forward a check in the amount of \$660, made payable to "Commissioner of Patents & Trademarks" and an additional check in the amount of \$100, made payable to "Sofer & Haroun, LLP."

You will also note from the Notice that formal drawings are required to be filed. We will attend to the preparation and bill you separately for this disbursement.

Sincerely yours,

Robert M. Haroun

RMH/st
Enc.

*Copy to Denise for page
Denise 1 only*
This is important
Haris Dov

TELEPHONE
(212) 697-2800
FACSIMILE
(212) 697-3004

FILE

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